

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability  
Contained in Complaint No. RB9-2002-0053**

**Mr. Ernest Moretti**

**NONCOMPLIANCE  
WITH  
CALIFORNIA WATER CODE SECTION 13267  
At  
Former Santa Ysabel Chevron  
30350 Highway 78  
Santa Ysabel, California**

**March 27, 2002**

**By**

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## **EXECUTIVE SUMMARY**

Complaint No. RB9-2002-0053 proposes a civil liability of \$42,625 against Mr. Ernest Moretti for failure to submit a technical report as ordered by the California Regional Water Quality Control Board, San Diego Region (Regional Board) pursuant to California Water Code (Water Code) section 13267. The technical report was due on February 24, 2002, and is to completely delineate the extent of petroleum hydrocarbon contamination in soil and groundwater originating from discharges of petroleum hydrocarbon wastes at the former Santa Ysabel Chevron Service Station owned by Mr. Moretti. Pursuant to Water Code section 13268 a civil liability may be administratively imposed for failure to submit a report requested under the authority of Water Code section 13267.

Santa Ysabel is dependent on groundwater for its water supply. Discharges of petroleum hydrocarbons at the former Santa Ysabel Chevron Service Station were reported in 1986, 1997, and 1999. The discharges resulted in benzene and methyl tertiary butyl ether (MTBE) pollution of groundwater with concentrations in excess of 23,000 and 4,000 micrograms per liter (ug/l), respectively. The primary maximum contaminate level (MCL) for benzene and MTBE is 1 ug/l and 13 ug/l, respectively.

Mr. Moretti did not use reasonable care in conducting and intentionally delayed the investigation of petroleum hydrocarbon contamination at the former Santa Ysabel Chevron and therefore is fully culpable for this violation. Mr. Moretti has a long history of non-compliance with regulatory requirements at the site. Voluntary cleanup efforts at the site have been minimal. Mr. Moretti's lack of action in cleaning up the site has lead to the degradation of groundwater quality, and is a potential source of pollution to the many domestic groundwater wells in Santa Ysabel. The total staff costs incurred by the Regional Board and Office of Chief Counsel is estimated to be \$14,400. Considering these factors, the proposed civil liability is assessed at \$55.00 per day of violation for 775 days of violation for a total of \$42,625. This amount is consistent with State Water Resource Control Board Guidance to Implement the Water Quality Enforcement Policy.

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## **1.0 INTRODUCTION**

On November 29, 1999, the California Regional Water Quality Control Board, San Diego Region (Regional Board), pursuant to California Water Code (Water Code) section 13267, ordered Mr. Ernest Moretti to submit a technical report no later than February 24, 2000. The purpose of the requested technical report is to completely delineate the extent of petroleum hydrocarbon contamination originating from discharges of petroleum hydrocarbon wastes at the site in soil and groundwater. Mr. Moretti failed to submit the report. Pursuant to Water Code section 13268 a civil liability may be administratively imposed for failure to submit a report requested under the authority of Water Code section 13267. On February 11, 2002, the Regional Board issued Complaint No. RB9-2002-0053 for administrative civil liability against Mr. Moretti for failure to submit the report. The proposed civil liability of \$42,625.00 is based on the assessment of the factors addressed in this technical analysis.

Mr. Moretti owned the former Santa Ysabel Chevron Station when unauthorized discharges of petroleum hydrocarbon wastes from the underground storage tank (UST) system were discovered in 1986, 1997, and 1999. The initial investigation conducted in 1989 confirmed that the soil contained petroleum hydrocarbons and that the groundwater was polluted by petroleum hydrocarbons. Corrective action is required under Article 11, Chapter 16, Title 23 of the California Code of Regulations (CCR) by any person who owns or operates, or had or has control over, an underground storage tank at the time an unauthorized discharge is discovered.

Since 1986, Mr. Moretti has conducted minimal site assessment and cleanup activities. In the thirteen years between the initial unauthorized discharge and March 1999, only one technical report was submitted. That report described the drilling of three soil borings at the site, and was submitted by Applied Hydrogeologic Consultants in September 1986. Between 1997 and 2002, thirteen monitoring wells were installed, but technical reports were never submitted. Site assessment activities have not been adequate to assess the complete extent of contaminated groundwater. Mr. Moretti's failure to complete the soil and groundwater investigation and submit an adequate technical report has delayed the commencement of cleanup activities and placed the water supply for the community of Santa Ysabel at risk of pollution.

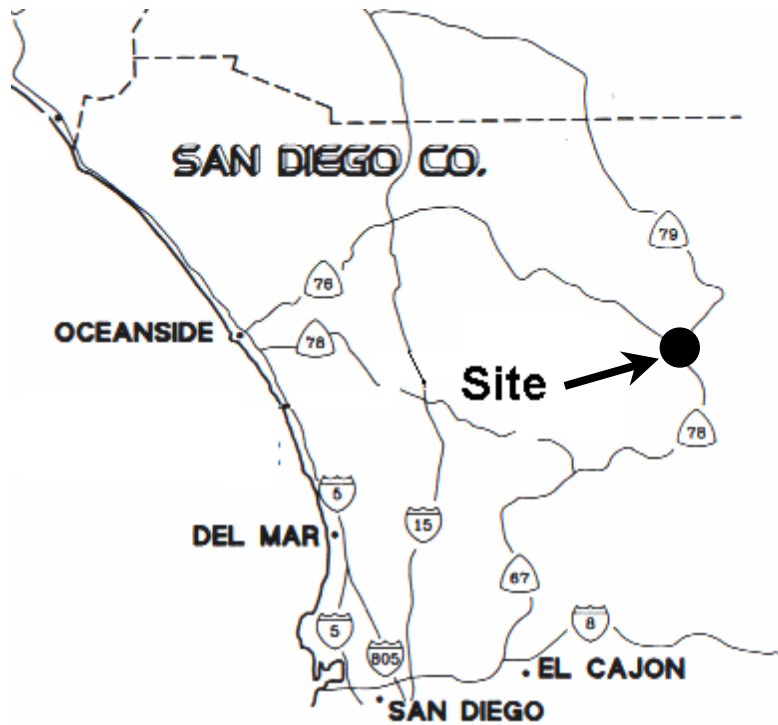
## **2.0 BACKGROUND**

### **2.1 Site Location**

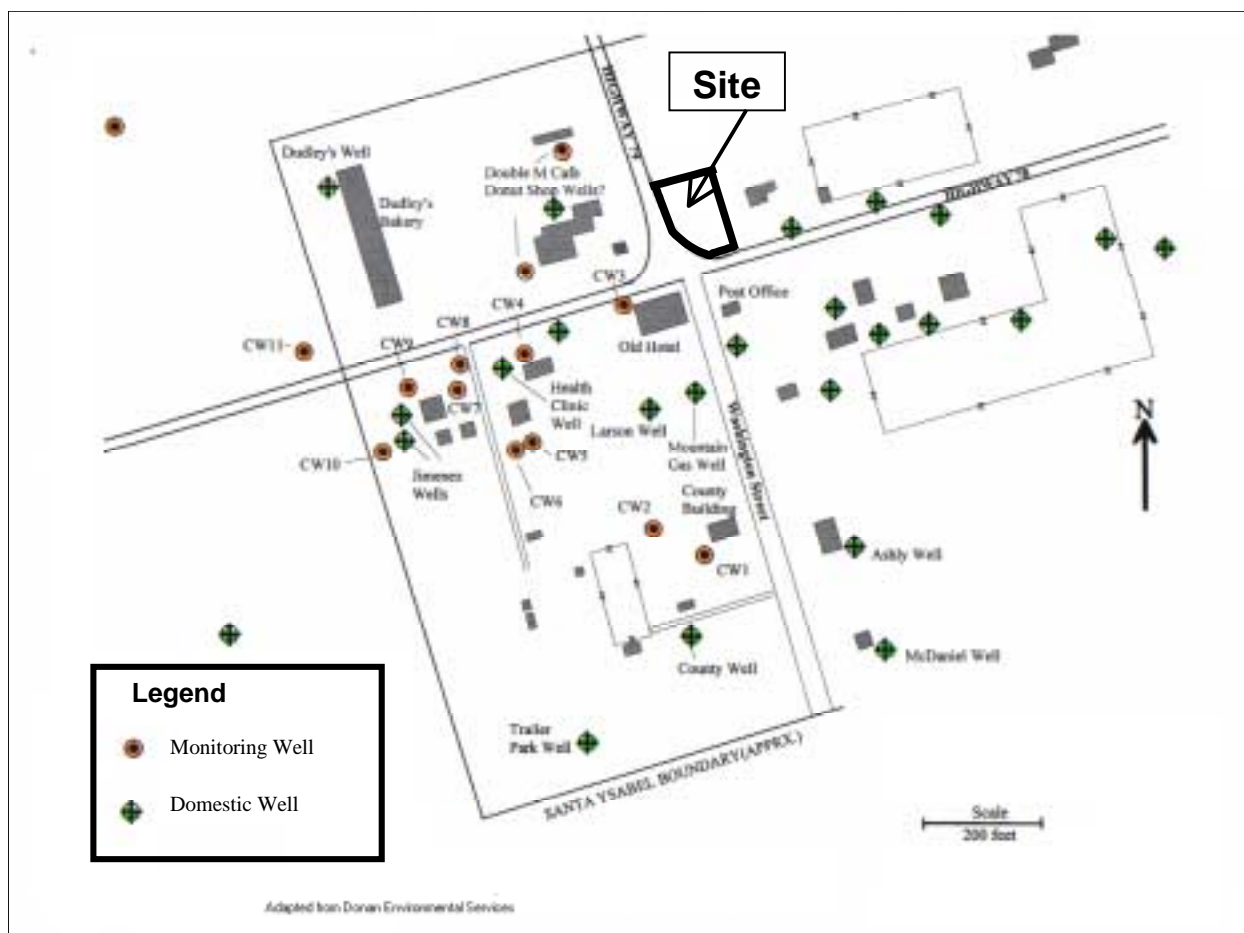
The Former Santa Ysabel Chevron Service Station property (site) is located at 30350 Highway 78 in Santa Ysabel, California (see Figures 1 and 2). Santa Ysabel is located approximately 40 miles northeast of downtown San Diego, in what is referred to as "eastern San Diego County." Land use in the area includes residential, commercial, and retail.

### **2.2 Groundwater Resources**

Santa Ysabel is a groundwater dependent community. There are at least 13 domestic groundwater wells within five hundred feet of the site. Santa Ysabel is located in the Santa Ysabel Hydrologic Area (905.50) of the San Dieguito Hydrologic Unit (905.00). Groundwater



**Figure 1 – Regional Site Location Map**



**Figure 2 – Site Vicinity Map**

in the Santa Ysabel Hydrologic Area has existing beneficial uses for municipal and agricultural supply. This area is a sensitive aquifer area because it sustains numerous domestic and public water supply wells.

### **2.3 Nature of Discharge**

Since 1977 there has been evidence of gasoline contaminated groundwater in Santa Ysabel. Unauthorized discharges of petroleum hydrocarbon wastes at the former Santa Ysabel Chevron Service Station were reported in 1986, 1997, and 1999, when USTs were removed from the site. Groundwater sampling data show that a plume of contaminated groundwater has migrated off-site. This plume has benzene and methyl tertiary butyl ether (MTBE) concentrations in excess of 23,000 and 4,000 micrograms per liter (ug/l), respectively. The primary maximum contaminate level (MCL) for benzene and MTBE is 1 ug/l and 13 ug/l, respectively.

### **3.0 PROJECT HISTORY**

A project timeline is presented in Appendix A. This timeline shows that Mr. Moretti has had adequate time to product the technical report, and that Mr. Moretti intentionally delayed the field work needed to complete the report. The timeline also highlights Mr. Moretti's long history of violating regulatory directives.

### **4.0 ALLEGATION**

The complaint alleges that Mr. Moretti failed to submit an adequate technical report by February 24, 2000, as ordered by the Regional Board pursuant to Water Code section 13267. The Regional Board required the technical report to delineate the vertical and horizontal extent of pollution at the site by February 24, 2000.

The number of days of violation used for assessment of the ACL is the 775 day period from February 24, 2000, to April 10, 2002, the date of the public hearing. If an adequate report is submitted before April 10, 2002, the Regional Board will recalculate the liability based on the actual number of days of violation.

### **5.0 DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY**

#### **5.1 Applicable Law**

California Water Code (Water Code) section 13267 (a) and (b) state the following:

*(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.*

*(b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is*



*suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports*

Water Code section 13268 (a) and (b) state the following:

*(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).*

*(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*

Mr. Moretti has been in violation of the Regional Board's order for a technical report since February 24, 2000. By April 10, 2002, when the Regional Board will consider Complaint No. RB9-2002-0053 and determine appropriate liability, if any, the number of days in violation will be 775-days. If Mr. Moretti submits an adequate technical report before April 10, 2002 the number of days of violation will be recalculated. The maximum administrative civil liability, which could be imposed by the Regional Board for this violation is \$775,000. A recommendation of \$42,625 is proposed for the above violation.

## **5.2 Factors to be Considered in Determining the Amount of Administrative Civil Liability**

Pursuant to Water Code section 13327 the Regional Board considered the following factors in determining the appropriate amount of the liability:

*The nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violations, and other matters as justice may require.*

The first three factors relate to the environmental significance of the violation. The remaining factors deal with the character, actions, and economic worth of the violator. These factors are discussed below (some factors have been grouped together).

#### **5.2.1 Nature, Circumstance, Extent, and Gravity of Violation and Degree of Toxicity**

These factors address the magnitude and duration of the violation. They also address the impact that the violation has on the beneficial uses of groundwater, public health, and water quality in the Santa Ysabel area. The nature of the violation is the failure to submit the required technical report. Failure to complete the soil and groundwater investigation and submit the technical report has caused a significant delay in cleaning up the site and may have allowed polluted groundwater to migrate throughout the Santa Ysabel area. This suspected migration poses a risk to public health and the beneficial uses of groundwater. Although sixteen years have passed since Mr. Moretti became aware of discharges of petroleum hydrocarbons at his site, he has not completed a soil and groundwater investigation of the extent and nature of the resulting contaminated soil and groundwater.

Groundwater at the site has been polluted by petroleum hydrocarbons a result of the discharge of petroleum hydrocarbon wastes to soil and groundwater. Until the soil and free product groundwater at the site are cleaned up, petroleum hydrocarbons will continue to leach into and pollute groundwater. Until the polluted groundwater is cleaned up, it can potentially migrate to unpolluted parts of this aquifer and to drinking water wells.

On March 23, 2000, the Regional Board issued a notice of violation (NOV) to Mr. Moretti for failure to submit the technical report. As per the Guidance to Implement the Water Quality Enforcement Policy, increased enforcement actions were considered when the report became more than 30 days late. The extent of the violation by April 10, 2002, when the Regional Board will consider violations and determine appropriate liability, if any, the number of days in violation will be 775 days.

Submission of the report is imperative to understanding the extent of the groundwater contamination emanating from the site, and the concentrations of petroleum hydrocarbons in the soil, and to determine appropriate actions to clean up the site. The delays in submitting the report are hindering the cleanup of the site and could lead to further pollution of the Santa Ysabel water supply.

#### **5.2.2 Degree of Culpability**

The amount of the ACL should be based in part on the actions of the discharger that caused the violation. The amount for an accidental violation should be less than for an intentional or negligent violation. In this situation, Mr. Moretti's lack of action to ensure that his consultant completed the soil and groundwater investigation and prepared an adequate technical report was intentional. By letter dated November 11, 1999, the Regional Board ordered Mr. Moretti to prepare and submit the report by February 24, 2000. The three month time period provided in the letter was more than ample time for Mr. Moretti to retain a consultant to prepare and submit the report. Correspondence in the file shows that staff made clear to Mr. Moretti the need for the

report and its due date. In spite of receiving a Notice of Violation for the late report on March 23, 2000, Mr. Moretti did not give approval to his consultant to commence fieldwork at the site until May 1, 2000, more than one month after the report was due. Mr. Moretti's consultant did not begin the process of drilling monitoring wells until September 2001 (one and one half years after the report was due). At this time, the consultant is still completing the borings and monitoring wells needed to define the horizontal and vertical extent of soil and groundwater contamination at the site. As of January 2002, groundwater from the wells completed last fall had not been sampled and analyzed.

Staff is not aware of any legitimate reasons why this work could not have been completed in a timely manner. Mr. Moretti has indicated that work was delayed pending pre-approval of costs from the State UST Cleanup Fund (Fund). In fact, in February 2000, Mr. Moretti requested a three month extension of the report due date because of the amount of time the Cleanup Fund was taking to process a "pre approval claim/request." Whether or not Mr. Moretti received pre-approvals or reimbursement from the Cleanup Fund, he is still responsible for cleaning up the site in a timely manner, especially since the discharge poses a threat to nearby domestic wells. The Regional Board denied Mr. Moretti's request for a time extension on that basis.

Mr. Moretti is solely responsible and culpable for failure to submit the technical report. The Fund will reimburse him for approved cleanup costs. The Regional Board on numerous occasions made him aware of his obligations to comply with directives of the Regional Board. The failure to submit the report was solely due to his intentional decision not to comply with the Regional Board's directive.

### **5.2.3 Prior History of Violations**

The amount of the ACL should be reflective of the discharger's prior history of violations. The number and significance of prior violations are a measure of the discharger's intent to comply with the law. Table 1 summarizes Mr. Moretti's prior violations.

The site history demonstrates Mr. Moretti consistently violated regulatory requirements, and submitted inadequate and late reports. Mr. Moretti has known since 1986 that he is responsible for the investigation and mitigation of the unauthorized discharge. Since that time Mr. Moretti has failed to assess the extent of contaminated soil and groundwater and has not cleaned up the groundwater polluted by the discharges of wastes from the former gasoline station.

**Table 1**  
**Summary of Past Violations**

<b>Date of Notification</b>	<b>Violation</b>
7/27/89	<b>Violation</b> - Discharge of waste to waters of the state – unauthorized discharge from a UST system
1/8/87	<b>Violation</b> – Failure to submit water sample results
6/12/97	<b>Violation</b> - Discharge of waste to waters of the state – unauthorized discharge from a UST system
2/25/98	<b>Violation</b> – Failure to submit workplan (workplan submitted nine days late)
2/23/99	<b>Violation</b> – Failure to submit soil and groundwater report
10/5/99	<b>Violation</b> - Discharge of waste to waters of the state – unauthorized discharge from a UST system
2/22/00	<b>Violation</b> – Failure to implement workplan
3/23/00	<b>Notice of Violation No. 2000-52</b> – Failure to implement workplan and failure to submit soil and groundwater report
12/13/00	<b>Violation</b> – Failure to submit workplan addendum
11/6/02	<b>Notice of Violation No.2001-331</b> – Failure to submit quarterly groundwater report
11/30/01	<b>Notice of Violation</b> – Failure to submit Corrective Action Plan

#### **5.2.4 Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken**

In this case the violation is failure to submit a report, and is not a waste discharge violation; therefore the violation is not amenable to cleanup and abatement. Submission of the report is the satisfactory remedy. However, delay in receiving this information may exacerbate water quality consequences of the unauthorized discharge in an area where groundwater is the sole source of drinking water.

#### **5.2.5 Economic Savings**

Mr. Moretti is in the Fund, and has already spent his deductible on his claim. Therefore, the failure to submit the technical report did not result in an economic savings to Mr. Moretti.

#### **5.2.6 Ability to Pay and Ability to Continue in Business**

At this time, the Regional Board is not aware of any circumstances, which would prevent Mr. Moretti from paying the proposed administrative civil liability (ACL) or prevent Mr. Moretti from continuing in business. The Regional Board should carefully consider the legitimacy of any such claim by Mr. Moretti with regard to the amount of ACL proposed in Complaint No. RB9-2002-0053.

### 5.2.7 Other Matters as Justice May Require

Since August 2001, the Regional Board has been compelled to spend an estimated 180 hours to investigate and consider action regarding this matter. At an average rate of \$80 per hour, \$14,400 of Regional Board resources have been expended as follows:

**Table 2**  
**Regional Board Staff Costs**

<b>Staff</b>	<b>Number of Hours</b>
Associate Engineering Geologist	160
Senior Engineering Geologist	16
Executive Officer	1
Senior Staff Counsel	3
<i>Total Hours</i>	<i>180</i>
Average Hourly Cost	\$80./hour
<b><i>Total Recoverable Staff Costs</i></b>	<b><i>\$14,400.00</i></b>

### 5.3 Minimum and Maximum Civil Liability Amounts

Pursuant to Water Code section 13268 the maximum civil liability that the Regional Board may assess is one thousand dollars (\$1,000) for each day of violation. A 775-day period of violation from February 14, 2000, to April 10, 2002, is being used for assessing the total amount of the liability. This period may be adjusted if an adequate report is received before April 10, 2002. The following table summarizes the minimum and maximum civil liabilities that may be issued to Mr. Moretti.

**Table 3**  
**Potential Minimum and Maximum Civil Liabilities**

<b>Violation</b>	<b>Days of Violation</b>	<b>Liability</b>	
		<b>Minimum</b>	<b>Maximum</b>
Failure to submit a technical report pursuant Water Code section 13267	775	\$0.00	\$775,000.00

#### 5.4 Proposed Civil Liability Per Violation

The proposed amount of civil liability attributable to the violation was determined by taking into consideration the factors discussed in section 5.2 as well as the maximum civil liability that the Regional Board may assess as discussed in section 5.3.

Mr. Moretti has not taken reasonable care and delayed the investigation of petroleum hydrocarbon contamination at the former Santa Ysabel Chevron and therefore is fully culpable for this violation. Mr. Moretti has a long history of non-compliance with regulatory requirements at the site. Voluntary cleanup efforts at the site have been minimal. Mr. Moretti's lack of action in cleaning up the site has lead to the degradation of groundwater quality, and is a potential source of pollution to the many domestic groundwater wells in Santa Ysabel. The total staff costs incurred by the Regional Board and Office of Chief Counsel is estimated to be \$14,400. Considering these factors, the proposed civil liability is assessed at \$55.00 per day of violation for 775 days of violation for a total of \$42,625.00. Appendix B presents a summary of the rationale used to set the proposed civil liability.

#### 5.5 Comparison of Proposed Civil Liability to SWRCB Guidance to Implement the Water Quality Enforcement Policy, Assessment Matrix

The SWRCB Guidance to Implement the Water Quality Enforcement Policy contains an Assessment Matrix as shown below. The matrix ranks the Compliance Significance (Discharger) and Environmental Significance (Discharge) as "Minor," "Moderate" or "Major." Based upon the determination of the two categories, a range of civil liability is provided. This matrix assists the Regional Board in determining, after a consideration of the factors in section 4.2, whether the proposed ACL is appropriate.

**Table 4**  
**Assessment Matrix**

<b><i>Compliance Significance (Discharger)</i></b>	<b><i>Environmental Significance (Discharge)</i></b>		
	<b><i>Minor</i></b>	<b><i>Moderate</i></b>	<b><i>Major</i></b>
<b><i>Minor</i></b>	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
<b><i>Moderate</i></b>	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
<b><i>Major</i></b>	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

Failure to submit a technical report is considered a "Moderate" Compliance Significance ranking as it pertains to the discharger because of the minimal voluntary cleanup efforts, prior history of multiple violations and Mr. Moretti's degree of culpability. The Environmental Significance (Discharge) is considered "Moderate" because the technical report will supply information on the current condition of pollution in an important drinking water aquifer. Using the matrix, the range of an ACL for a "Moderate" Compliance Significance rank with a "Moderate"

Environmental Significance rank is \$10,000 - \$100,000. The proposed civil liability of \$42,625.00 is within the matrix range.

## **6.0 TOTAL PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

The total proposed civil liability in this matter, accounting for the violation is \$42,625.00.

## **APPENDIX A – PROJECT TIMELINE**

**1978** - Mr. Moretti acquires the site.

**October 15, 1982** - An “off taste and odor” was reported in water from a domestic well (Donut Shop well) located across the street from the site.

**January 26, 1984** - Ms. Jiminez contacts the Regional Board and San Diego County Department of Health to report that several domestic wells in the Santa Ysabel area have been contaminated with gasoline.

**February 1, 1984** - Petroleum hydrocarbons detected in water samples collected from North County Health Clinic and Jiminez wells.

**July 28, 1986** - Two abandoned USTs removed from the site.

**August 5, 1986** - Notice of an “Unauthorized Release of Hazardous Materials from an Underground Storage Tank” (H03198-001) issued by the San Diego County Health Department to Mr. Moretti.

**September 12, 1986** - Soil and groundwater investigation conducted at site by Applied Hydrogeologic Consultants. Groundwater sample collected at the site had a benzene concentration of 20,000 ug/l.

**October 28, 1986** - Letter from San Diego County Health Department to Mr. Moretti stating that “..regarding the gasoline contamination within the community of Santa Ysabel, the subject site [the Moretti site] appears to be the source of the contamination.” Requested that groundwater samples be collected and analyzed from nearest domestic groundwater wells.

**January 8, 1987** - Letter from San Diego County Health Department to Mr. Moretti stating that they have not received groundwater test data requested on October 28, 1986.

**June 12, 1997** - Three USTs (2 1K, 1 2K) removed from the site. Soil samples collected at the time of the UST removal were reported to have TPH concentrations from “not detected” to 3,911 mg/kg.

**July 1987** - Report prepared for California Department of Health Services concludes “the Chevron gas station [site]...may have been a source of the hydrocarbon contamination” in the Santa Ysabel area.

**August 11, 1997** - San Diego DEH issued Unauthorized Release H03198-002 and referred case to Regional Board.

**December 17, 1997** - Letter to Mr. Moretti from the Regional Board. Requests workplan to conduct soil and groundwater investigation be submitted by February 16, 1998.



**December 19, 1997** - Letter from Donan Environmental Services (DES). Notification that DES was selected as consultant for Mr. Moretti.

**February 20, 1998** - Workplan to conduct a soil and groundwater investigation submitted to the Regional Board (*4 days late*).

**March 24, 1998** - Letter to Mr. Moretti from the Regional Board concurring with workplan with comments and requiring that the soil and groundwater report be submitted by June 30, 1998

**May 28, 1998** - Letter to Moretti from the Regional Board granting approval for extension of due date for soil and groundwater investigation report to July 31, 1998.

**July 22, 1998** - Letter from Mr. Moretti. He is waiting on preapproval from Underground Storage Tank Cleanup Fund (Fund). DES estimates that it will take 14 weeks to complete the soil and groundwater investigation. Requests additional time to do work. **Request made nine days prior to the date that the report was due.**

**July 24, 1998** - Telecom from Mr. Moretti stating that he got preapproval from Fund and will start soil and groundwater investigation.

**September 21, 1998** - Telecom with DES. Investigation started Sept 16, 1998, **47 days after the report was due and 54 days after Mr. Moretti was notified of pre-approval of costs from the Fund.**

**Oct. 28, 1998** - Telecom with DES. Staff makes first request for status on investigation and UST removal. DES to submit status report to the Regional Board by following week. Report now 90 days late.

**February 23, 1999** - Telecom with DES. **Soil and groundwater investigation report 208 days late. Staff makes second request for the report.**

**February 23, 1999** - Telecom with Moretti. Third request for soil and groundwater investigation report. Moretti was told that soil and groundwater investigation report is overdue and requested that report be submitted ASAP.

**March 15, 1999** - "Site Assessment Report, Phase I Soil and Groundwater Investigation" by DES, received **228 days after original due date**. Eight wells installed in September, 1998. Benzene in groundwater up to 23,983 ug/l. MTBE in groundwater up to 4,250 ug/l.

**September 15, 1999** - CAO 99-26 issued.

**October 5, 1999** - One 550 gallon UST removed from site.

**October 5, 1999** - Letter from DEH. Unauthorized discharge detected during tank removal. Case referred to the Regional Board.

**October 27, 1999** - “Addendum Site Assessment Workplan” submitted by DES.

**November 17, 1999** - “Interim Remedial Measure Notification per Cleanup and Abatement Order 99-26” submitted by DES. DES notified the Regional Board that a one day vapor extraction pilot test would be conducted at the site pursuant to CAO 99-26 directive 1. **This phase of work was not conducted until August 2001, approximately 730 days after notification letter was issued. A report of the vapor extraction pilot test has yet to be submitted.**

**November 29, 1999** – Issued section 13267 Directive to Mr. Moretti to submit an adequate, complete technical report of a soil and groundwater investigation to completely delineate the extent of pollution at the site by February 24, 2000, and a post-tank removal report by December 5, 1999. Directive Letter also gave concurrence to the Workplan Addendum submitted by DES dated Oct 27, 1999.

**December 3, 1999** - “Post Tank Removal Investigation Report” submitted by DES. *Results indicate petroleum hydrocarbon-bearing soil remains in place after the excavation.* Approximately 200 cubic yards of soil were excavated.

**January 26, 2000** – DES submitted proposal to Mr. Moretti to conduct a small portion of the work of the required soil and groundwater investigation. **This proposal was submitted 2 months after workplan approval and 16 days before the report due date.**

**February 4, 2000** - Letter from Moretti in which he foresees a delay in meeting February 24, 2000 report deadline and requests a three month extension. **Letter submitted 67 days after Directive Letter was issued and 20 days prior to report due date.** Reason stated by Moretti is the length of time it has taken the State to process his “pre-approval claim/request.” Pursuant to CAO this work was to begin within 30 days of concurrence with workplan, which occurred on November 29, 1999.

**February 14, 2000** – DES submitted a proposal to Mr. Moretti to conduct the soil and groundwater investigation **10 days prior to the report due date.**

**February 23, 2000** - Letter from Mr. Moretti requesting extension to the CAO May 30, 2000 deadline for the Corrective Action Plan due to delays in soil and groundwater investigation.

**March 3, 2000** – Staff memo from Corey Walsh to John Anderson. Discusses rationale for a notice of violation to be issued to Moretti. The reasons for the NOV are as follows:

1. Water Quality Monitoring Program submission late.
2. Requirement to begin implementation of the investigation within 30 days as required by CAO not meet.
3. Soil and Groundwater Investigation report not submitted by due date.
4. Three month delay in implementation of approved workplan.

**March 7, 2000** - Pre-approval letter from Fund for Feb. 14, 2000 DES proposal. Fund indicated that the proposal did not have include costs for drilling which would be submitted on separate cover.

**March 20, 2000** - Letter to Mr. Moretti from the Regional Board regarding his request for extension of due dates. Because “ground water at the site has been impacted, adjacent domestic water wells are threatened, and the designated beneficial uses of the water have been impaired,” **the Regional Board did not grant an extension.**

**March 23, 2000** - *NOTICE OF VIOLATION NO. 2000-52* issued to Mr. Moretti for failure to implement workplan and failure to submit technical report. **Report 31 days late.**

**March 26, 2000** - Letter from Mr. Moretti acknowledging receipt of NOV. States that he does not have the money to do the work. Nonetheless, he has an active claim with the Underground Storage Tank Cleanup Fund.

**May 1, 2000** - Telecom between Corey Walsh and Mr. Moretti. Mr. Moretti gave approval to DES to conduct the soil and groundwater investigation, **70 days after the report was due.**

**May 25, 2000** - Project Update Letter by DES. They propose to start drilling offsite wells by July 24, 2000, **150 days after the report was due**, and submit site soil and groundwater investigation report by September 30, 2000, **190 days after the report was due.**

**October 13, 2000** – “Limited Domestic Well Survey Report” submitted by DES. DES identified 20 domestic wells within 1,000 feet of the site, and 13 wells within 500 feet of the site.

**November 27, 2000** - Letter to Mr. Moretti re Domestic Well Survey Report. Letter required Mr. Moretti to notify owners of wells B3, B7, and Q6 that groundwater samples had detectable concentrations of acetone and toluene, prepare brief amended workplan for installation of shallow and deep off site wells, submit amended workplan within two weeks, and immediately start work.

**December 12, 2000** - “Amended Site Assessment Workplan, Off-Site Soil and Groundwater Investigation” submitted by DES. The workplan was not signed by registered geologist.

**March 30, 2001** - Telecom with Ms. Julie Chan of the Regional Board and DES, in which DES stated that it will begin fieldwork in early June. **Report now 403 days late.**

**May 11, 2001** – San Diego County Department of Environmental Health approves well permit for well D8, shallow and deep, and well D5, shallow and deep. **Report now 445 days late.**

**May 22, 2001** - San Diego County Department of Environmental Health approves well permit for well D6, shallow and deep, and well D9, shallow and deep. **Report now 456 days late.**

**July 27, 2001** - Office meeting with Anderson Donan of DES and Gary Vargas representing Mr. Moretti, and Julie Chan, and Barry Pulver of the Regional Board. Mr. Donan and Mr. Vargas

were told that the Regional Board considers this case to have a very high priority because groundwater contamination has been known to exist in the Santa Ysabel area since 1977, and that Santa Ysabel is a groundwater dependant community. Therefore, this matter needs to be resolved in an expedited manner. The Regional Board stated that if reports and site cleanup activities are not completed on time the Regional Board will issue a notice of violation (NOV) and if the violation is not resolved within 30 days, the Regional Board will consider it to be a significant violation and issue a complaint for an administrative civil liability (ACL).

**July 30, 2001** - Letter from DES claiming that well owners were notified of acetone and toluene in groundwater wells.

**July 31, 2001** - "Amended Site Assessment Workplan" submitted by DES. The Site Soil and groundwater investigation Workplan Addendum proposes to conduct a downhole geophysical survey in two to three boreholes. **Report now 523 days late.**

**August 9, 2001** - Letter to Mr. Moretti – Workplan Approval Letter. Approved workplan with condition that downhole geophysics be conducted on only two wells at this time.

**August 21, 2001** - Telecom with DES. DES is in the process of getting pre-approval to conduct the soil and groundwater investigation costs from the Fund. DES conducted soil vapor pilot test this week (VES pilot test report not yet received). They got very good response and will try to get a VES system started soon. DES will get a workplan to install a VES system to the Regional Board by the end of September (VES System workplan not yet received). Drilling is scheduled for mid-September. **Report now 544 days late.**

**September 10, 2001** - Telecom with Anderson Donan of DES. Drilling scheduled for September 17, 2001. Barry Pulver told Mr. Donan that it is very important to meet enforceable dates. **Report now 564 days late.**

**November 6, 2001** - *NOTICE OF VIOLATION of CAO 99-26* issued to Mr. Moretti for failure to submit third quarter 2001 groundwater monitoring report.

**November 9, 2001** - Returned telephone call to Mr. Moretti. Mr. Moretti had several concerns regarding the Notice of Violation that was issued to him for failure to submit a groundwater monitoring report as required by CAO 99-26. Our discussion centered around his failure to submit the report on time. Mr. Pulver reminded Mr. Moretti that the due dates are clearly stated in the CAO, and that on August 7, 2001 Mr. Pulver issued a letter that included a reminder that the third quarter monitoring report was due by October 30, 2001. Mr. Moretti stated that his consultant mailed the letter in late October. Mr. Pulver responded that the letter was postmarked Nov. 2, 2001, past the date when the report was due in the office.

On several occasions Mr. Moretti asked that the Regional Board not issue him anymore NOVs. Each time he made this request he was told that all he needs to do is to comply with the due dates of reports. His response to this comment was that we will get the reports when we get them.

**November 30, 2001** - Letter to Mr. Moretti – Discussed slowness in soil and groundwater investigation and non-compliance with CAO 99-26 and 13267 orders – especially failure to submit a technical report and failure to submit a corrective action plan.

**November 30, 2001** - Issued Addendum 1 to CAO 99-26 which revised groundwater sampling test methods, required submission of workplans to sample off site groundwater production wells, and to install replacement wells at the site, sample the production wells, and to submit a technical report of the replacement well installation by April 15, 2002.

**December 4, 2001** - Telecom with Mr. Donan (DES) – discussed compliance letter and amended CAO. Donan notified us that he drilled into a UST on a neighboring property. Discussed submitting interim off site report, but that it would not be considered compliance with CAO requirement.

**December 28, 2001** - Received Supplemental Site Assessment Workplan, Interim Off-Site Technical Report, and Addendum Water Quality Monitoring Program Workplan by DES.  
**Report now 673 days late.**

**January 11, 2002** - Telecom with Mr. Donan to discuss documents recently submitted by DES. Mr. Donan was asked why the newly installed wells were not sampled because the sampling results are needed to assess the extent of contamination from the discharge. Mr. Donan responded that he did not have time to do so and that he would do it during the first quarter of 2002. ***Mr. Pulver reminded him that the technical report was due February 24, 2000, and he has yet to comply with other requirements of the CAO. Report now 687 days late.***

**February 1, 2002** - Telecom with Gary Vargas, registered geologist for DES. Discussed project and reminded Mr. Vargas that Mr. Moretti needs to submit a technical report that defines the vertical and horizontal extent of contaminated groundwater in order to be in compliance with the Regional Board's order to submit a technical report. **Report now 717 days late.**

**February 11, 2002** - Complaint for administrative Civil Liability against Mr. Moretti issued.

**March 11, 2002** - DES submits a letter to the Regional Board requesting an unspecified extension of the report of the installation of the replacement groundwater monitoring wells that were required pursuant to Addendum 1 to CAO 99-26. This request was submitted 100 days after Addendum 1 to CAO 99-26 was issued and only 34 days prior to the deadline for submission of the report, which will require the drilling and installation of five groundwater monitoring wells.

**March 19, 2002** – The Regional Board issues a letter to Mr. Moretti denying the time extension.

**APPENDIX B**  
**MONETARY ASSESSMENTS OF ADMINISTRATIVE CIVIL LIABILITY**

Factor	Amount
Initial Liability	\$7,500
Beneficial Use Liability	\$0
<i>Base Amount</i>	<i>\$7,500</i>
Discharger's Conduct	
Culpability Factor	100 %
Notification Factor	100 %
Cleanup and Cooperation Factor	200 %
History of Violations Factor	200 %
<i>Total Conduct Factor</i>	<i>4</i>
Adjustment for Discharger's Conduct	\$30,000
Adjust for other Factors	\$0
Economic Benefit	\$0
Adjustments for Ability to Pay and Stay in Business	\$0
Staff Costs	\$12,625
Total ACL Amount	\$42,625
Days of Violation	775
Amount of ACL Per Day of Violation	\$55

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1. Methodology used in this assessment is consistent with SWRCB enforcement policy.